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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/766,604	01/27/2004	Karla E. Williams	460.1844USV1	3398

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EXAMINER
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ANDERSON, CATHARINE L

ART UNIT	PAPER NUMBER
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3761

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/766,604	<b>Applicant(s)</b> WILLIAMS, KARLA E.	
	<b>Examiner</b> Lynne Anderson	<b>Art Unit</b> 3761	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 April 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 23-41 is/are pending in the application.
- 4a) Of the above claim(s) 26, 34-38 and 41 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 23-25, 27-33, 39 and 40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of Species IA in the reply filed on 23 April 2008 is acknowledged. The traversal is on the ground(s) that the different species do not recite mutually exclusive characteristics because both initially provide zeolite in a solid form. This is not found persuasive because the additional step of suspending the zeolite powder in a liquid results in a method that is mutually exclusive of the method of Species I, since in one case the zeolite is added to the pad in solid form, and in the other the zeolite is added to the pad in a liquid form. Further, it is noted that the method of Species II discloses directly impregnating the absorbent pad with the zeolite suspension, which is again mutually exclusive of the method of Species I, which discloses bonding the zeolite powder between two layers of nonwoven web.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 26, 34-38, and 41 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 24 April 2008.

3. New claims 27-41 were added in the Amendment dated 17 December 2007 in response to the Non-final rejection dated 14 September 2007.

### ***Response to Arguments***

4. Applicant's arguments filed 17 December 2007 have been fully considered but they are not persuasive.

5. In response to the applicant's argument that Schone teaches away from incorporating zeolite into a tampon, since Schone teaches bentonite clay as the preferred odor absorbent material, it is noted that disclosed examples and preferred embodiments do not constitute a teaching away from a non-preferred embodiment (see MPEP 2123(II)). Schone teaches a method of incorporating an odor absorbent material into a tampon, and further discloses zeolite as an odor absorbent material.

6. In response the applicant's argument that Schone teaches an odor absorbent material that is encapsulated, not sandwiched, between the layers of nonwoven web, it is noted that Schone discloses an odor absorbent material located between two layers that are bonded together, as shown in figure 2, and therefore discloses odor absorbent material sandwiched between the layers. The odor absorbent material is applied to the nonwoven web, and the two layers of web are bonded together, thus fulfilling the limitations of the present claims.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claim 23 is rejected under 35 U.S.C. 102(e) as being anticipated by Schone (6,175,055).

9. Schone discloses a method of incorporating zeolite into a tampon, as described in column 1, lines 39-42, and column 2, lines 27-29. The method comprises distributing zeolite granules 8 on a first nonwoven web 6 and bonding a second web 6 to the first web, as disclosed in column 2, lines 52-56.

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 24-25 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schone (6,175,055) in view of Kramer et al. (5,165,152).

12. With respect to claims 24-25, Schone discloses all aspects of the claimed invention with the exception of the step of cutting the webs prior to forming the tampon. Kramer teaches the method of forming a tampon by cutting a web to form the tampons, as described in column 10, lines 41-48. This method allows for the high-speed mass production of tampons, as described in the Abstract. It would therefore be obvious to one of ordinary skill in the art at the time of invention to form the tampons of Schone using the step of cutting taught by Kramer to allow for high-speed mass production of the tampons.

13. With respect to claim 40, Schone discloses all aspects of the claimed invention with the exception of each of the strips having at least 0.03 grams of zeolite therein. The amount of zeolite applied to the strips is considered a result-effective variable

because the amount of zeolite is a direct result of how much zeolite is applied to the strips. It would have been obvious to one of ordinary skill in the art at the time of invention to provide the strips with at least 0.03 grams of zeolite, since it has been held that where the general condition of the claims are disclosed in the prior art (i.e. the method of application of zeolite to an absorbent article for odor absorption), finding the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

14. Claims 27-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schone (6,175,055) in view of Kramer et al. (5,165,152), and further in view of Marcus et al. (4,826,497).

15. Schone, as modified by Kramer, discloses all aspects of the claimed invention with the exception of the zeolite being clinoptilolite. Marcus teaches the use of zeolite as an odor absorbent in absorbent articles such as tampons, as disclosed in column 1, lines 8-16 and 60-65. Marcus discloses that natural zeolites such as clinoptilolite provide preferred odor suppression, as described in column 3, lines 22-34. It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the tampon of Schone with clinoptilolite, as taught by Marcus, to provide improved odor suppression.

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16. Claims 30-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schone (6,175,055) in view of Kramer et al. (5,165,152) and Marcus et al. (4,826,497), and further in view of the GSA Resources Inc. Material Safety Data Sheet.

17. Schone, as modified by Kramer and Marcus, discloses a tampon comprising the natural zeolite clinoptilolite, but does not disclose the type of clinoptilolite. A thermal type 3 clinoptilolite zeolite comprising about 4.3% potassium and having a density of about 87 lb/ft<sup>3</sup> is commercially available from GSA Resources Inc under the name ZK406, as described in the Material Data Safety Sheet dated 1 July 1998. It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the tampon of Schone with the thermal type 3 clinoptilolite zeolite provided under the name ZK406 by GSA Resources Inc, to provide the predictable result of reducing odors with a commercially available zeolite.

18. Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schone (6,175,055) in view of Marcus et al. (4,826,497).

19. Schone discloses all aspects of the claimed invention with the exception of the size of the particles of zeolite. Marcus teaches the use of zeolite as an odor absorbent in absorbent articles such as tampons, as disclosed in column 1, lines 8-16 and 60-65, and further teaches a suitable size for the zeolite particles of about 500 microns. It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the tampon of Schone with zeolite particles having a size of 500 microns, as

taught by Marcus, to provide zeolite in a suitable size for use as an odor absorbent in a tampon.

### ***Conclusion***

20. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lynne Anderson whose telephone number is (571)272-4932. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/L. A./

Examiner, Art Unit 3761

/Tatyana Zalukaeva/

Supervisory Patent Examiner, Art Unit 3761